

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015071052

ORDER GRANTING MOTION FOR
STAY PUT

On July 16, 2015, Student filed a request for due process, alleging that San Diego Unified School District denied her a free and appropriate public education when it placed Student at Mason Elementary School for the 2015 extended school year, over Parents' objections. Student asserts that her May 14, 2015 annual IEP placed her at Lindbergh Schweitzer Elementary School, where she attended a special class designed with services and support to meet her multiple disabilities and special education needs, for both the regular school year and the extended school year. Student alleges that District's placement at Mason for the 2015 ESY jeopardized Student's health and welfare, was contrary to her IEP, and denied Student a FAPE. On July 16, 2015, Assistant General Counsel, Patrick D. Frost, filed notice of representation on behalf of District, acknowledging receipt of Student's complaint.

On July 17, 2015, Student filed a motion to stay put, seeking an order that District be required to retain Student's placement at Lindbergh, including during 2015 ESY, until the due process proceedings are complete. District has not filed any opposition to the stay put motion.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

It does not violate stay put if a school is closed for budget reasons and the child is provided a comparable program in another location. (See *McKenzie v. Smith* (D.C. Cir. 1985) 771 F.2d 1527, 1533; *Knight v. District of Columbia* (D.C. Cir. 1989) 877 F.2d 1025, 1028; *Weil v. Board of Elementary & Secondary Education* (5th Cir. 1991) 931 F.2d 1069, 1072-1073; see also *Concerned Parents & Citizens for Continuing Education at Malcolm X (PS 79) v. New York City Board of Education* (2d Cir. 1980) 629 F.2d 751, 754, cert. den. (1981) 449 U.S. 1078 [101 S.Ct. 858, 66 L.Ed.2d 801]; *Tilton v. Jefferson County Bd. of Education* (6th Cir. 1983) 705 F.2d 800, 805, cert. den. (1984) 465 U.S. 1006 [104 S.Ct. 998, 79 L.Ed.2d 231].)

DISCUSSION

Student’s motion for stay put is supported by the declaration of her attorney Jazmine Gregory. The motion also includes the following exhibits: Student’s March 2014 triennial IEP; Student’s May 2015 annual IEP; May 21, 2015 email from Parents to District’s Interim Special Education School Program Manager Julie Jones; May 22, 2015 email from Ms. Jones responding to Parents; June 2, 2015 notice from District to Parents notifying that Student would attend 2015 ESY at Mason Elementary; and June 26, 2015 letter from Student’s attorney Ms. Gregory to District’s Assistant General Counsel Amy Bozone.

The motion for stay put concerns whether Student’s last signed and implemented IEP placed Student at Lindbergh for the 2015 ESY. This is very similar to Student’s complaint wherein the sole issue is whether District denied Student a FAPE by unilaterally placing Student at Mason for 2015 ESY, over Parents’ objections. However, the discussion and analysis in this order is for the sole purpose of rendering a ruling on the stay put motion and is not intended as a final finding for hearing that District denied a FAPE. The due process proceeding will result in a decision on the complaint’s issues by the administrative law judge who will independently hear the evidence at hearing, analyze the facts and law, and issue a decision.

Student’s primary special education eligibility is for multiple disabilities, while her secondary eligibility is for orthopedic impairment. She is seven years old and has had an IEP since May 2011. District placed Student at Lindbergh for preschool (2012-2013), kindergarten (2013-2014), and first grade (2014-2015). Both the March 2014 IEP and the May 2015 IEP reflect thoughtful and thorough consideration of Student’s multiple medical, motor, and special education needs. Student is diagnosed with quadriplegic cerebral palsy, epilepsy, congenital brain malformation, intellectual disability, osteopenia, vision impairment and global developmental delays. She is nonverbal.

Student's March 2014 triennial IEP placed Student in a separate special day class, 100 per cent of her school day. Her separate class setting had an educational specialist and related service providers who were trained in working with students with significant medical and/or physical needs. In November 2013, full-time individualized para educator support was added to her IEP. At school, Student received specialized health care services of suctioning for excessive secretions due to inability to control or clear secretions. Student received related services, including speech, occupational therapy, physical therapy, adapted physical education, and nursing as part of her IEP. She communicated by a variety of augmentative aids and techniques. The IEP noted that speech services needed to be collaborative to include direct services and consultation with parents, teachers, and staff to support Student's communication development. Student required adapted seating, standing, and mobility equipment, such as a Rifton Activity Chair, pony walker, and upright stander. The IEP team identified special factors in service delivery in multiple areas, as well as supplemental aids, supports, and modifications.

The IEP placed Student at Lindbergh, noting that Lindbergh was not Student's school of residence and that, therefore, Student was entitled to transportation services. Student was transported to and from school in a wheelchair, while wearing a neck brace. The IEP also provided Student with a bus monitor because of her seizure disorder and congestion problems. The March 2014 IEP team determined Student required ESY in order to receive a FAPE. The IEP was signed and accepted by Parents. Student completed her 2013-2014 kindergarten year at Lindbergh. She went to Lindbergh for her 2014 ESY, attending the same class she had during the regular school year.

Student went to Lindbergh for her 2014-2015 first grade year. Student's annual IEP was held on May 14, 2015. The IEP reviewed Student's present levels of academic achievement and functional performance, as well as her goals. The IEP team provided services consistent with those of the March 2014 triennial IEP. The IEP team placed Student at Lindbergh for the period of May 2015 through May 2016, again noting that Lindbergh was not Student's school of residence. The IEP again provided transportation. The May 2015 IEP team also found that Student required 2015 ESY to receive a FAPE. Parents agreed to and signed the IEP.

On May 21, 2015, Parents wrote Ms. Jones, expressing concerns regarding District's intent to send Student to Mason, not Lindbergh, for 2015 ESY. Parents reviewed their and Student's history with the Lindbergh placement, noting that Student attended 2014 ESY at Lindbergh in the same class she had during the regular school year. Parents expressed grave reservations regarding Student's attendance at Mason, noting the move was based on District's recent policy push to have children attend their home schools. Parents said that Student's multiple physical and medical needs were addressed in a carefully crafted IEP and that District's change of Student's ESY placement did not consider Student's unique needs; District was implementing a policy without consideration of Student's IEP and the IEP team's placement. Parents objected to District's intended change of Student's 2015 ESY from Lindbergh to Mason.

Ms. Jones replied to Parents email on May 22, 2015. She stated that the site at which a student attends ESY is based on the student's school of residence, not the school of attendance. The only exception would be for students who attend District's specialized programs, such as those who are hard of hearing or visual impairment. She said Student was not enrolled in a District specialized program.

Ms. Jones said that Student's school of residence was Dingeman Elementary School, which "feeds into" Mason for 2015 ESY. Therefore, Student was assigned to Mason for 2015 ESY. Ms. Jones said that parents can choose to ask a school that is not their child's assigned ESY site if they have space and could accommodate the student's enrollment. However, in this scenario, District would not supply special education transportation.

Ms. Jones reviewed the support services, including the full-time presence of a nurse, at the Mason ESY site. She explained how Student's needs would be met, including communication between the Mason personnel and Lindbergh providers, teachers, and administrators. Ms. Jones sought to alleviate Parents' concerns.

By letter dated June 2, 2015, District formally informed Parents that Student would attend 2015 ESY at Mason. The only reason given in the letter for the ESY placement was that Mason was the ESY site for Student's school of residence. The letter noted that if Student received transportation during the regular school year, transportation would be provided to Mason for 2015 ESY.

On June 26, 2015, attorney Ms. Gregory wrote Ms. Bazone, stating Parents concerns and position regarding District's intent to place Student at Mason for 2015 ESY. The letter summarized Student's multiple physical and medical needs, and the many supports and services devised by the IEP. Ms. Gregory asserted that the IEP's placement for Student was Lindbergh for both the regular school year and 2015 ESY. She also stated that Lindbergh would be Student's stay put placement, should a due process be filed. Ms. Gregory stated, as in her declaration, that Parents were told that 2015 ESY was being offered at Lindbergh and was the same program that Student attended for 2014 ESY and the regular school year.

Student's motion is unopposed. Therefore, the extent of the communication exchange between District and Parents is uncertain. Further, since ESY has already started, there is no indication of whether Student is attending ESY and, if so, at which site.

The May 14, 2015 annual IEP is the last signed and implemented IEP. Its provision of FAPE is for the period of May 14, 2015 to May 12, 2016. The IEP places Student at Lindbergh, noting that it is not her school of residence. The IEP provides Student with transportation. The IEP finds Student is entitled to 2015 ESY to receive a FAPE.

Student's IEP is a carefully crafted provision of specific educational placement, which is a unique combination of facilities, personnel, location, and equipment necessary to provide Student with a FAPE. This was at a school other than Student's school of residence. The IEP does not differentiate placement between the regular school year and 2015 ESY. If

2015 ESY was not being offered at Lindbergh, then District would certainly be entitled to place Student at a different physical site as long as District provided Student with a comparable program consistent with Student's IEP. However, since Lindbergh had a 2015 ESY program, placement for 2015 ESY for purposes of stay put is Lindbergh, which is consistent with Student's last agreed upon and implemented IEP. Student is entitled to the IEP's services and supports, including transportation.

ORDER

1. Student's motion for stay put is granted.
2. Student's stay put placement, during the pendency of the due process proceedings herein, is Lindbergh Elementary School, including 2015 ESY.
3. At 2015 ESY, Student is entitled to all services and supports as set forth in her last signed and implemented IEP of May 14, 2015, including transportation.

DATE: July 29, 2015

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings